

for each air interface offered that comply with § 20.19(b)(2) by September 18, 2006.

(2) And each provider of public mobile service must include in their handset offerings at least two handset models for each air interface that comply with § 20.19(b)(2) by September 18, 2006 and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store.

(e) *De minimis exception.* (1) Manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of this section. For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in the U.S., the service provider would likewise be exempt from the requirements of this section.

(2) Manufacturers or mobile service providers that offer three digital wireless handset models, must make at least one compliant phone model in two years. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless phone models in the U.S. would be required to offer at least one compliant handset model.

(f) *Labeling requirements.* Handsets used with public mobile services that are hearing aid compatible, as defined in § 20.19(b) of this chapter, shall clearly display the U-rating, as defined in 20.19(b)(1), (2) on the packaging material of the handset. An explanation of the ANSI C63.19-2001 U-rating system shall also be included in the owner's manual or as an insert in the packaging material for the handset.

(g) *Enforcement.* Enforcement of this section is hereby delegated to those states which adopt this section and provide for enforcement. The procedures followed by a state to enforce this section shall provide a 30-day period after a complaint is filed, during which time state personnel shall attempt to resolve a dispute on an informal basis. If a state has not adopted or incorporated this section, or failed to act within 6 months from the filing of a complaint with the state public utility commission, the Commission will accept such complaints. A written no-

tification to the complainant that the state believes action is unwarranted is not a failure to act. The procedures set forth in part 68, subpart E of this chapter are to be followed.

[68 FR 54175, Sept. 16, 2003]

§ 20.20 Conditions applicable to provision of CMRS service by incumbent Local Exchange Carriers.

(a) *Separate affiliate.* An incumbent LEC providing in-region broadband CMRS shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated incumbent LEC. Nothing in this section requires the affiliate to maintain separate books of account that comply with part 32 of this chapter;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated incumbent LEC that the affiliated incumbent LEC uses for the provision of local exchange service in the same in-region market. Nothing in this section prohibits the affiliate from sharing personnel or other resources or assets with its affiliated incumbent LEC; and

(3) The affiliate shall acquire any services from its affiliated incumbent LEC for which the affiliated incumbent LEC is required to file a tariff at tariffed rates, terms, and conditions. Other transactions between the affiliate and the incumbent LEC for services that are not acquired pursuant to tariff must be reduced to writing and must be made on a compensatory, arm's length basis. All transactions between the incumbent LEC and the affiliate are subject to part 32 of this chapter, including the affiliate transaction rules. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated incumbent LEC, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) *Independence.* The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated incumbent LEC. The affiliate

may be staffed by personnel of its affiliated incumbent LEC, housed in existing offices of its affiliated incumbent LEC, and use its affiliated incumbent LEC's marketing and other services, subject to paragraphs (a)(3) and (c) of this section.

(c) *Joint marketing.* Joint marketing of local exchange and exchange access service and CMRS services by an incumbent LEC shall be subject to part 32 of this chapter. In addition, such agreements between the affiliate and the incumbent LEC must be reduced to writing and made available for public inspection upon request at the principal place of business of the affiliate and the incumbent LEC. The documentation must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information Systems (ARMIS) reports. The affiliate must also provide a detailed written description of the terms and conditions of the transaction on the Internet within 10 days of the transaction through the affiliate's home page.

(d) *Exceptions.* (1) *Rural telephone companies.* Rural telephone companies are exempted from the requirements set forth in paragraphs (a), (b) and (c) of this section. A competing telecommunications carrier, interconnected with the rural telephone company, however, may petition the FCC to remove the exemption, or the FCC may do so on its own motion, where the rural telephone company has engaged in anticompetitive conduct.

(2) *Incumbent LECs with fewer than 2 percent of subscriber lines.* Incumbent LECs with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide may petition the FCC for suspension or modification of the requirements set forth in paragraphs (a), (b) and (c) of this section. The FCC will grant such a petition where the incumbent LEC demonstrates that suspension or modification of the separate affiliate requirement is

(i) Necessary to avoid a significant adverse economic impact on users of telecommunications services generally or to avoid a requirement that would

be unduly economically burdensome, and

(ii) Consistent with the public interest, convenience, and necessity.

(e) *Definitions.* Terms used in this section have the following meanings:

Affiliate. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with, another person. For purposes of this section, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

Broadband Commercial Mobile Radio Service (Broadband CMRS). For the purposes of this section, "broadband CMRS" means Cellular Radiotelephone Service (part 22, subpart H of this chapter), Specialized Mobile Radio (part 90, subpart S of this chapter), and broadband Personal Communications Services (part 24, subpart E of this chapter).

Incumbent Local Exchange Carrier (Incumbent LEC). "Incumbent LEC" has the same meaning as that term is defined in §51.5 of this chapter.

In-region. For the purposes of this section, an incumbent LEC's broadband CMRS service is considered "in-region" when 10 percent or more of the population covered by the CMRS affiliate's authorized service area, as determined by the 1990 census figures, is within the affiliated incumbent LEC's wireline service area.

Rural Telephone Company. "Rural Telephone Company" has the same meaning as that term is defined in §51.5 of this chapter.

(f) *Sunset.* This section will no longer be effective after January 1, 2002.

[62 FR 63871, Dec. 3, 1997, as amended at 66 FR 10968, Feb. 21, 2001]

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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